

**JOINT LEGISLATIVE SUNSET
REVIEW COMMITTEE FINDINGS AND
RECOMMENDATIONS**

**Review and Evaluation of the
Speech-Language Pathology and Audiology Board**

**Report to the
Department of Consumer Affairs**

APRIL, 1998

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

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IDENTIFIED ISSUES, RECOMMENDATIONS, AND FINAL ACTION OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REGARDING THE SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD (SPAB)

ISSUE #1. Should the State continue the licensing of speech-language pathologists?

Recommendation: *Both the Department and Committee staff recommended that the licensing and regulation of speech-language pathologists by the State of California be continued.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: The practice of speech-language pathology involves the measurement, testing, identification, counseling, and instruction related to the development and disorders of speech, voice, or language. Speech-language pathologists (SLPs) also conduct hearing screenings, and conduct programs to identify, evaluate and rehabilitate disorders of speech, voice or language.

In some settings, SLPs engage in activities that pose a risk to the public. The Board cites the American Speech-Language-Hearing Association stating that 40% of the 87,000 speech-language pathologists and audiologists (nationally) practice in health-care settings such as hospitals, clinics, physician offices and nursing home facilities. In such settings, SLPs may engage in a number of practices that have the potential for public harm, such as: evaluating and treating swallowing disorders, fitting and training patients with specialized devices or prosthetic appliances to aid communication (e.g., patients with no larynx, or other voice or throat damage).

B&P Code § 2530.5 exempts from licensure SLPs in public or private elementary or secondary schools and those employed by federal agencies. No federal mandates require states to license or regulate SLPs. However, there are state requirements regarding Medi-Cal reimbursement for SLP services provided in both non-exempt and exempt settings. The Board states that most states regulate SLPs through

licensure, while Minnesota “registers” and Washington “certifies” SLPs. No states have deregulated SLPs. Seven states and the District of Columbia do not regulate SLPs.

ISSUE #2. Should the State continue to license audiologists?

Recommendation: *Both the Department and Committee staff recommended that the licensing and regulation of audiologists by the State of California be continued.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: Consumers (spanning in age from newborns to elderly) rely on audiologists to evaluate hearing and balance functions with a variety of techniques and instruments. Such tests require the application of sound, air pressure, electricity, and other physical stimuli in the ear and to the head—often involving instruments inserted into the ear canal. Any of the many types of hearing and balance tests contains risk that a subject may be physically harmed.

Harm can also result from inappropriate or incorrect interpretation of the results of hearing and balance tests. Failing to properly identify and assess a hearing disorder can delay referral for medical or rehabilitative care, or, in the case of pathological conditions, even result in irreversible medical consequences. With hearing-impaired children, delay can result in permanent language-development disorders. Similarly, over-referral can result in inappropriate and potentially hazardous medical intervention.

B&P Code § 2530.5 exempts from licensure audiologists in public or private elementary or secondary schools and those employed by federal agencies. No federal mandates require states to license or regulate audiologists. However, there are state requirements regarding Medi-Cal reimbursements for hearing aid sales to children, as well as Medi-Cal reimbursement for audiological services provided in both non-exempt and exempt settings. Most states regulate audiologists through licensure, while Colorado and Minnesota “registers” and Washington “certifies” audiologists, and no states have deregulated audiology. Four states and the District of Columbia do not regulate audiologists.

ISSUE #3. Should the State license speech-language pathology assistants as proposed by AB 205 (Machado)?

Recommendation: *Both the Department and Joint Committee generally recommend that all new licensure programs be required to go through a “sunrise” process, similar to that of sunset review, required under Section 9148 et seq. of the Government Code, and by the rules of the Senate Business and Professions Committee. The proposal for a new license category of “speech-language pathology assistant” had fulfilled this requirement. Therefore, Committee staff recommended the licensing of speech-language pathology assistants consistent with the actions of the Legislature.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: AB 205 (Machado), which is being considered by the Legislature in the 1997-1998 Legislative Session, would create a new license category of “speech-language pathology assistant” under the jurisdiction of the Board.

AB 205 is sponsored by the California Speech-Language-Hearing Association (CSHA) and the California School Employees Association (CSEA) and is supported by the Board and numerous others. The proponents of the new licensing category argue that there is a severe shortage of SLPs and the current university programs are unable to produce an adequate supply of SLPs to meet the demands of schools, rehabilitative health facilities, long-term care facilities, and private practice settings. They argue that creation of a new mid-level practitioner category will relieve this shortage and take pressure off licensed SLPs. That bill passed the Assembly 78-0, on consent and has been approved by the Business and Professions Committee. The sponsors have made AB 205 a two-year bill awaiting the results of the current sunset review hearings.

ISSUE #4. Should the scope of practice for audiologists be expanded to include the practice of dispensing hearing aids?

Recommendation: *Both the Department and Committee staff recommended that all proposals to further expand the scope of audiologists should be evaluated on a case-by-case basis and subjected to the requirement of “sunrise” review. The Department and Committee staff further recommended that both SPAB and the Hearing Aid Dispensers Examining Committee (or a merged board of the two) evaluate whether there are any health and safety risks posed by allowing audiologists to also sell hearing aids.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: Business and Professions Code Section 3351.3 allows licensed audiologists, individuals supervised by an audiologist, and physicians and surgeons to fit hearing aids. However, they are not allowed to directly or indirectly engage in the sale or offering of hearing aids for sale. Hence, the audiologists are properly trained in the fitting of hearing aids, but not permitted to sell them.

The California Academy of Audiology (CAA), a professional association representing audiologists is proposing an expansion of scope of practice to include the dispensing of hearing aids under an audiology license. The CAA argues that audiologists are required to have a minimum of a master's degree in the field of audiology—a field that encompasses the knowledge necessary to dispense hearing aids. By contrast, a hearing aid dispenser must have a minimum of a high school education pass a written and practical examination. Prior to passing the examination, applicants generally obtain a temporary license, and receive training under the supervision of a licensed dispenser. CAA states that 22 states already allow audiologists to dispense hearing instruments under their audiology license.

Proponents of this licensing expansion should be required to go through a “sunrise” process, similar to that of sunset review, required under Section 9148 et seq. of the Government Code, and by the rules of the Senate Business and Professions Committee. They should demonstrate whether audiology training is adequate to dispense hearing aids. Additional issues are: Does the national audiology examination cover the dispensing of hearing aids? Has the audiology examination and the hearing aid dispenser examination been evaluated as to whether they represent the knowledge, skills and abilities that are required to dispense hearing aids? Would allowing audiologists to dispense hearing aids benefit consumers or the profession?

ISSUE #5. Should the degree Doctor of Audiology (Au. D.), granted by an accredited institution, qualify an audiologist for licensure?

Recommendation: *The Department did not address this issue. Committee staff recommended that the Board should evaluate this proposal and report their recommendations to the Legislature.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: CAA advocates allowing the degree Doctor of Audiology (Au. D.), granted by an accredited institution, to qualify an audiologist for licensure. CAA states that approximately four institutions are now granting this degree, and argues that the Board should recognize this degree as meeting the educational standards necessary for licensure in California.

ISSUE #6. Should the SLPs and audiologists be required to complete continuing education as a condition of license renewal, as recommended by the Board?

Recommendation: *The Department concurred with Committee staff, that the Board needs to clearly document the harm that consumers encounter without a mandatory continuing education requirement for licensees. The Department does not believe that additional conditions for licensure should be adopted absent clear justification.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: The Board recommends that a mandatory continuing education (CE) program for license or registration renewal be established. To that end, the Board supports AB 205 (Machado), which is being considered by the Legislature in the 1997-1998 Legislative Session, and would require SLPs, audiologists, and any aides (or assistants) to fulfill CE requirements as a condition of license or registration renewal. AB 205 passed the Assembly 78-0, on consent and also was approved by the Business and Professions Committee. The sponsors have made it a two-year bill awaiting the results of the current sunset review hearings.

A mandatory CE requirement would generate unspecified costs to licensees and generate corresponding revenues to CE providers. The Board would also incur costs in establishing CE standards and tracking licensee compliance. In the light of the low number of complaints by consumers and enforcement actions against licensees, what is the demonstrated need to mandate CE? The Board should address the justification for, cost, and availability of such continuing education.

It may be useful to draw a distinction between CE that is undertaken voluntarily by conscientious, motivated practitioners, versus CE that is undertaken involuntarily by unwilling or unmotivated practitioners. While continuing education seems intuitively to be highly beneficial to licensees and the consumer public (especially for health care practitioners), there is no empirical evidence that demonstrates a clear conjunction between a CE mandate and improved practitioner competence.

The Board believes that continuing education in the two regulated professions is needed to assure that practitioners keep pace with the rapidly increasing technological advances and emerging treatment issues in today's health care. However, the Board states that licensees are evaluated by their employers and by hospitals as part of their accreditation requirements, and licensees receiving federal reimbursements are required to undergo reviews in order to bill and collect for services. It would appear that the existing evaluations and reviews would more appropriately insure that licensees continue their professional education rather than a CE program administered by a licensing Board.

An appropriate place for mandatory CE in this licensing program might be the one in the Board's proposed disciplinary guidelines, which include a provision requiring that educational courses be taken while a licensee is on probation for incompetence or negligence.

ISSUE #7. Should an electronic tracking system be implemented, as recommended by the Board, to obtain timely, accurate and complete licensing and enforcement data?

Recommendation: *The Department did not address this issue. Committee staff concurred with recommendation of the Board to implement an electronic tracking*

system, as long as the Board complies with all mandated requirements to implement any new technology project.

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: The Joint Committee has historically supported the application of technology when it will improve the efficiency and effectiveness of any Board. However, the Board must comply with the requirements of the Government Code and the State Administrative Manual to implement an electronic tracking system.

ISSUE #8. Should the Speech-Language Pathology and Audiology Board further improve its internal procedures in order to shorten the time frame for processing licensing applications and issuing licenses?

Recommendation: *The Department did not address this issue. Committee staff recommended that the Board should report to the Joint Committee by June 1, 1998, on whether it has established time lines for processing licensing applications and issuing licenses to qualified applicants. The Board should also report on its procedures for processing incomplete applications.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: Anecdotal evidence has been given to the Joint Committee, which suggests that the Board may be slow in processing licensing applications. The Joint Committee may wish to have the Board report on its efforts to speed up the application and licensing process, and in particular, its efforts to contact applicants who submit incomplete applications.

ISSUE #9. Should B&P Code §§ 2535.3, 2535.4 be amended to require the payment of “all accrued and unpaid renewal fees” in order to renew an expired license?

Recommendation: *Both the Department and Committee staff recommended that Sections 2535.3 and 2535.4 should be amended to require the payment of all accrued and unpaid renewal fees in addition to the delinquency fee when an expired license is renewed.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: There appears to be a loophole in the Speech-Language Pathologists and Audiologists Licensure Act regarding the collection of delinquent licensing fees. B&P Code § 2535.3 (and § 2535.4, for suspended licenses) permits a licensed speech-language pathologist or an audiologist to practice without paying a license renewal fee for up to *five years* after that license has expired, and then renew the delinquent license by paying a single licensing fee – “the

renewal fee in effect on the last regular renewal date” – and a delinquency fee, but does not provide for any accruing late fees.

In recent years the Legislature has seen fit to close similar loopholes in the Nursing Home Administrators (§ 3924), Acupuncture (§ 4966) and Respiratory Care acts (§ 3774). It seems appropriate that the Joint Committee should consider recommending eliminating the current loophole for SLPs and audiologists and thereby conform this statute with other licensing acts, and thwart a source of possible revenue loss to the Board. Therefore, it would appear consistent to recommend amending §§ 2535.3 and 2535.4 to provide that a license may be renewed within that five-year period upon payment of all accrued and unpaid renewal fees and penalty fees required by the chapter.

ISSUE #10. Should the Speech-Language Pathology and Audiology Board be continued as an independent Board, merged with another similar licensing Board, or should its functions and operations be assumed by the Department?

Recommendation: *Both the Department and Committee staff recommend merging the Speech-Language Pathology and Audiology Board with the Hearing Aid Dispenser Examining Committee (HADEC). Any legislation enacted to continue a merged Board should require a subsequent sunset review within four years.*

Vote: *The Joint Committee did not adopt the recommendation of the Department and Committee staff by a vote of 1-4.*

Comment: In recent years, the Legislature has moved toward consolidating regulatory Boards which license similar professions in an effort to improve the efficiency of consumer related Boards, eliminate duplicative or overlapping licensing functions and, at times, eliminate regulatory agencies which no longer serve the public need. Some examples are: (1) the separate Boards licensing barbers and cosmetologists were consolidated into the Board of Barbering and Cosmetology, (2) the licensing of both landscape architects and architects by the Board of Architectural Examiners.

It may be appropriate to consolidate the Speech-Language Pathology and Audiology Board and the Hearing Aid Dispenser Examining Committee into a single licensing Board for a number of reasons:

- a. The enforcement activity of the Speech-Language Pathologist and Audiologist Board is almost non-existent. In the last four years the Board received only 146 complaints. Only 11 complaints were referred for formal investigation, and 80 were handled “informally” (the Board handles minor complaints that pose no serious harm to the consumer in-house, i.e. “informally”). During that time the Board revoked only 1 license, and stayed revocation

(probation) on 2 others. In each of the last four years, the Board has spent less than 25% of its budget on enforcement. In the last two years the Board has issued only 7 citations (none in FY 95/96).

- b. A substantial number are dual licensees under both Boards. Possibly the strongest argument for merger is that over 40% of hearing aid dispensers are also licensed as audiologists. There are 1,238 audiologists and 1,457 hearing aid dispensers licensed in the state.
- c. The Boards would be more effective if combined. A merger could achieve some economies of scale since both committees have very minimal staff (SPAB – 3.2 authorized positions; HADEC – 4.1 authorized positions). By combining staff and resources, enforcement activities could be increased.

Legislation, which would have merged the two Boards, was approved by both houses of the Legislature in 1994. SB 2037 (McCorquodale) would have, among other things, consolidated the Speech-Language Pathologists and Audiology Examining Committee and the Hearing Aid Dispensers Examining Committee, into a single Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board. That legislation embodied part of the recommendation of a Business and Professions Committee subcommittee chaired by then Senator McCorquodale. The subcommittee made its recommendation upon the same basis as the current proposed recommendation. That bill was never enacted since Senator McCorquodale dropped the bill (moved non-concurrence in Assembly amendments) due to reasons unrelated to the merger of these two Boards.

ISSUE #11. If the Speech-Language Pathology and Audiology Board is merged with the Hearing Aid Dispenser Committee, then should the combined board have a public member majority?

Recommendation: *Both the Department and Committee staff recommended a public member majority for the combined board. Committee staff recommended a 13-member board with 2 licensed audiologists, 2 hearing aid dispensers, 2 speech-language pathologist, and 7 public members.*

Vote: *Since the Joint Committee did not adopt the recommendation of the Department and Committee staff to merge the Speech-Language Pathology and Audiology Board with the Hearing Aid Dispenser Committee, this recommendation was not voted on.*

Comment: The current composition of the Speech-Language Pathology and Audiology Board is made up of 3 SLPs, 3 audiologists, and 3 public members -- 1 of which is a otolaryngologist (physician and surgeon), for a total of 9 members. The current composition of the Hearing Aid Dispensers Committee is 3 hearing aid dispensers, 2 public members, 1 audiologist, and 1 physician and surgeon certified in otolaryngology, for a total of 7 members. The Department is recommending that a combined board should have a public member majority and an odd number

of members. Committee staff agrees. The composition recommended would seem to meet the requirements of having licensees adequately represented and still providing for a public majority.